the legend "produce of Morocco" written on the bags was from an evidential point of view inadmissible against the appellant as hearsay and that the list of exceptions to the hearsay rule could not be extended to include such things as labels or markings.

It was clear that there was, in the case under appeal, no evidence or no admissible evidence against the appellant.

The appeal was therefore allowed, the convictions quashed and the fines if paid were ordered to be refunded.

Appeal allowed.

Solicitors: *Jayadeva & Zahir.*

WONG LANG HUNG v. NATIONAL EMPLOYEES' MUTUAL GENERAL INSURANCE ASSOCIATION LTD.

[O.C.J. (B.T.H. Lee J.) March 9, 1972]

[Sibu — Civil Suit No. 64 of 1968]

Insurance — Fire insurance — Action to recover under policy — Failure to commence arbitration proceedings within period mentioned in policy — Exception clause — No misrepresentation to induce plaintiff to sign proposal form — Suppression of material facts — Policy void — Proposal form completed by agent of insurance company — Agent is agent of insured.

The plaintiff brought the action against the defendants to recover the sum of $20,000 on a policy of fire insurance issued by the defendants to the plaintiff. The defendant company pleaded (1) that there was material mis-statement in the proposal form which stated that the house was not attached to any building when in fact it was so attached; (2) that the plaintiff had failed to commence arbitration proceedings within the period mentioned in the policy. In her reply the plaintiff alleged that she had been induced to sign the prepared form by the misrepresentation of the defendants' agent, and because of this, the defendants were not entitled to rely on the exception clause, which purported to except the defendants from common law liabilities.

Held: (1) there was no misrepresentation on the part of the defendants and as it was conceded that the plaintiff had failed to commence arbitration proceedings before the period mentioned in the policy, this was a bar to her claim;

(2) as the answers in the proposal form were untrue and there was a suppression of material facts, the policy was void and the plaintiff could not recover;

(3) the agent of the defendants in completing the insurance form was acting as the plaintiff's agent and not on behalf of the defendants.

Cases referred to:

(1) *Curtis* v. *Chemical Cleaning and Dyeing Co. Ltd.* [1951] 1 All E.R. 631.

(2) *Karsales (Harrow) Ltd.* v. *Wallis* [1956] 2 All E.R. 866.

(3) *Smeaton Hanscomb & Co. Ltd.* v. *Sasson I. Setty Son & Co.* [1953] 2 All E.R. 1471.

(4) *John Carter (Fine Worsteds) Ltd.* v. *Hanson Haulage (Leeds) Ltd.* [1965] 2 Q.B. 495 at p. 528.

(5) *Suissee Atlantique Societe D'Armement Maritime S.A.* v. *N.V. Rotterdamache Kolen Centrale* [1967] 1 A.C. 361 at pp. 421-422.

(6) *Dawsons Ltd.* v. *Bonnin and Ors.* [1922] All E.R. Rep. 88 at p. 94.

(7) *London General Omnibus Co. Ltd.* v. *Holloway* [1911-13] All E.R. Rep. 518 at p. 524.

(8) *Newsholme Brothers* v. *Road Transport and General Insurance Co. Ltd.* [1929] 2 K.B. 356 at p. 362.

(9) *Joel* v. *Law Union and Crown Insurance Co.* [1908] 2 K.B. 863 at p. 878-

(10) *O'Connor* v. *B.D.B. Kirby Co.* [1971] 2 All E.R. 1415.

CIVIL SUIT.

Joseph C. C. Tang for the plaintiff.

S. K. Reddi for the defendants.

B.T.H. Lee J.: This action was brought by the plaintiff against the defendants to recover the sum of $20,000 on a policy of insurance issued by the defendants to the plaintiff on 4th January, 1966.

On 16th August, 1966, the premises was destroyed by fire. The plaintiff made a claim against the defendants under the policy, but the defendants repudiated liability. This action was then brought.

The plaintiff by paragraphs 2 and 4 of her statement of claim alleges as follows: —

"2. On the 17th day of August 1966, the said house was destroyed completely by fire.

3. .....

4. Particulars of the said loss and damage which were duly delivered by the plaintiff to the defendant's agent at Sibu on the 17th day of August 1967 are as follows: —

(a) Extent of loss — Total destruction by fire of the dwelling-house insured with timber walls and billian timber roof situate at Lanang Road, Sibu on or about the 17th day of August, 1967.

(b) Cause of fire — by unknown Trespassers".

By his defence as amended the defendants denied the claim and pleaded *inter alia*: —

"2. The defendants deny paragraph 2 of the statement of claim.

3. The said policy was issued pursuant to a proposal form signed by the plaintiff on the 29th December, 1965. To question 8 of the proposal form which reads:

'Are the premises attached to other building? If so, state construction and occupation of adjoining building'. the plaintiff answered 'No'.

4. In pursuance of the said proposal form and the declaration of the truth of the statement or statements contained in the answers, the defendants issued the said policy, the first recital of which provided (*inter alia*) that the written proposal and declaration therein containing the statements shall be the basis of the contract and be considered as incorporated therein. The defendants will refer to the said proposal form and the said policy for its full terms and effect at the hearing of this action.

5. The defendants will contend that at all material times the answer given by the plaintiff to question 8 of the proposal form was untrue when in truth and in fact the building was attached to another building, and that accordingly the defendants are not liable under the said policy.

6. Further, the said policy contained a warranty that during the currency of the policy the building insured was detached by at least 20 feet on all sides from any other building (excluding small outhouses).

7. The defendants will contend that at all material times, the building insured was not detached and also not detached by at least 20 feet on all sides from any other building and that accordingly the plaintiff was in breach of this warranty.

8. Further, the said policy was issued subject to *inter alia*, condition 8 which provides that the insurance ceased to attach as regards property affected if the nature of the occupa-

tion of or other circumstances affecting the building insured or containing the insured property be changed in such a way as to increase the risk of loss or damages by fire.

9. The defendants say that the plaintiff was in breach of the said condition 8 in that she stored or allowed to be stored in the building insured benzine, a substance which increased the risk of loss or damage by fire.

9A. The defendants say that there was non-disclosure and misrepresentation.

PARTICULARS

Benzine was stored in the ceiling and elsewhere before the date of the proposal form and that the benzine was used for operating two water pumps, one of which was subsequently stolen.

10. The said policy was issued subject also to condition 19 which provide that the defendants shall in no case whatever be liable for any loss or damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration.

11. The defendants will contend that the plaintiff failed to commence arbitration proceedings or court proceedings within twelve months of the alleged loss or damage and accordingly is barred from bringing this claim."

To the defence, the plaintiff filed a reply, the material terms of which read as follows: —

"2. The plaintiff admits the signing of the proposal form dated the 29th December, 1965 as contained in paragraph 3 of the defence. The plaintiff says that the answers to question 8 and the whole of the proposal form were filled in by the defendant company's agent, servants or representatives.

3. The plaintiff says she expressly told the defendant's agents, servants or representatives that the premises to be insured were attached to other buildings on one side of a distance of about 12 feet apart and a separate independent building on another side also of about 12 feet apart.

4. The defendant's agents or representatives were fully aware of the true state of the premises to be insured and their surroundings when the defendant issued the said policy to the plaintiff.

5. Further, the plaintiff says that before the signing of the proposal form by the plaintiff on the 29th December 1965, when the defendant's agents or representatives in Sibu on being asked by the plaintiff why her signature was required said:

'It was only to confirm that the facts which had just been related to you are all true and correct.'

6. 'The facts' as referred to in the preceding paragraph are the true state of the premises to be insured as related by the plaintiff to the defendant's agents or representatives.

7. By virtue of the aforesaid misrepresentation the plaintiff says that she was induced to sign the proposal form dated 29th December, 1965.

8. Further, and alternatively the plaintiff says that at the time she signed the said proposal form the defendants their servant or agent represented to her and she honestly believed that the said proposal form was only to confirm the statement of facts as stated in paragraphs 5 and 6 herein and the plaintiff signed the said proposal form in that belief.

9. The plaintiff says the defendant is estopped from relying on the declaration clause and answers to question 8 of the proposal form to repudiate their liabilities.

10. Further, the defendant is estopped from relying on the warranty contained in the policy (as referred to in paragraph 6 of the defence). The said warranty is of no legal effect, null and void.

11. The plaintiff denies that the buildings contained benzine as stated in paragraph 9 of the defence.

12. Alternatively the plaintiff says that the answer to question 7 of the proposal form states that the premises to be insured consist of kerosene stove and firewood stove. Therefore the plaintiff says the defendant has full knowledge that benzine would be stored in the premises.

13. Accordingly the defendant is estopped from relying on paragraphs 8, 9 and 9A of the defence.

14. Further and in the alternative the plaintiff says that the storing of the benzine which is denied as referred to in paragraphs 9 and 9A of the defence was without the knowledge of the plaintiff. The storing of the benzine was the acts of trespassers of which the plaintiff had no knowledge and therefore could not control.

15. The plaintiff denies that there was non-disclosure and misrepresentation as alleged in paragraph 9A of the defence.

16. To paragraphs 10 and 11 of the defence the plaintiff in reply repeats paragraphs 5, 6, 7 and 8 of the reply herein.

17. The plaintiff says that the defendant by virtue of their servants' or agents' misrepresentation is estopped from relying on condition 19 of the policy as basis of denying liability."

I now turn to the fire insurance proposal form (Exhibit P1) containing a number of questions of which the following, with answers thereto, are material: —

"Name Madam Wong Lang Hung

Address 90, Lanang Road, Sibu.

Policy to date from 1.1.66 to 1.1.67

1, 2, 3, 4 and 5, ...

6. Are any hazardous trades carried on or hazardous goods stored? If so, give details.	No.
7. Are there any stoves, furnaces, or means of producing fire heat OTHER THAN for cooking? If so, give details.	Kerosene stove and firewood stove.
8. Are the premises attached to other buildings? If so, state construction and occupation of adjoining buildings.	No.

"

It is to be observed that all the questions were also printed in Chinese characters.

At the foot of the proposal form is a declaration to be signed by the proposer in this form:

"DECLARATION. — I/We warrant that the above statements and particulars which I/We have read over and checked are true, and I/We declare that I/We have withheld no information whatever that might tend in any way to increase the risk of the Association, or influence the acceptance of this Proposal. I/We desire to effect an insurance with and apply to become members of the Association in the terms, conditions and exceptions of the Policy to be issued by the Association, and the Association's Memorandum and Articles of Association. I/We agree that this Proposal shall form the basis of the contract between me/us and the Association, and shall be deemed as incorporated in the Policy to be issued.

Date: 29.12.65 Sgd: Wong Lang Hung (in Chinese characters)"

This proposal was accepted by the Insurance Association and a policy (Exhibit P2) dated 4th January, 1966 was accordingly issued.

By condition 1 indorsed on the policy it was made a condition of the policy that any material misdescription of any of the property or any omission to state such fact, the association shall not be liable.

By condition 18 it was also made a condition of the policy that any question or difference as to amount of any loss or damage between the parties shall be referred to arbitration.

And condition 19 provides that in no case whatever shall the association be liable for any loss or damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration.

Page 3 of the policy then sets out the following warranty:

"Warranted that during the currency of this Policy the building insured by this Policy is detached by at least 20 feet on all sides from any other building (excluding small outhouses)."

At this stage I would refer to such provisions in the policy (Exhibit P2) as appear to be relevant.

"Condition 18. — If any difference arises as to the amount of any loss or damage such difference shall independently of all other questions be referred to the decision of an Arbitrator, to be appointed in writing by the parties in difference, or if they cannot agree upon a single Arbitrator, to the decision of two disinterested persons as Arbitrators, of whom one shall be appointed in writing by each of the parties within two calendar months after having been required so to do in writing by the other party. In case either party shall refuse or fail to appoint an Arbitrator within two calendar months after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint a sole Arbitrator; and in case of disagreement between the Arbitrators, the difference shall be referred to the decision of an Umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the Arbitrators and preside at their meetings. The death of any party shall not revoke or affect the authority or powers of the Arbitrator, Arbitrators, or Umpire respectively; and in the event of the death of an Arbitrator or Umpire, another shall in each case be appointed in his stead by the party or Arbitrators (as the case may be) by whom the Arbitrator or Umpire so dying was appointed. The costs of the reference and of the award shall be in the discretion of the Arbitrator, Arbitrators or Umpire making the award. And it is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this Policy that the award by such Arbitrator, Arbitrators or Umpire of the amount of the loss or damage if disputed shall be first obtained.

Condition 19. — In no case whatever shall the Association be liable for any loss or damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration."

The following have been established by evidence and it is not disputed before me that: —

(1) Two proposal forms for policies of insurance were made in respect of:
   (a) Tiong Ley Hong (First Policy)
   (b) Wong Lang Hung (Plaintiff — second Policy).
(2) Both proposal forms are dated 29 December, 1965 together with sketches on them drawn by Lau Nai Tai, the local agent for the defendant's company. Both proposal forms were completed by Lau Nai Tai on instructions received.
(3) The first policy was for $23,000, the second policy (plaintiff) was for $20,000.
(4) The fire which occurred on 17th August, 1966, partly destroyed the house owned by Tiong Ley Hong (first policy) and totally destroyed the house of Wong Lang Hung (plaintiff).
(5) The claim forms were completed on 18th August 1966.
(6) The fire damage assessor, Mr. Bateman of M/s. Harrison and Crossfield from Kota Kinabalu came to Sibu shortly after the fire and assessed the damage to both buildings. The claim of Tiong Ley Hong (first policy) was settled in the sum of $8,000. That of Wong Lang Hung was and has not been settled.
(7) Paragraphs 10 and 11 of the amended defence have been conceded by plaintiff.

The substance of the plaintiff's evidence is to the effect that she herself personally effected the insurance on her own house in the office of Lau Nai Tai (DW2), for the sum of $20,000. She told DW2 whom she alleged was the insurance agent that her house was at least 20 feet away from the neighbour's house.

DW2 asked her to sign the proposal form to confirm that the particulars written by him in the proposal form were correct.

The sketch plan was drawn by DW2.

According to her, the particulars in the proposal form were explained to her by DW2. She answered questions put to her by DW2 which were recorded in the form.

However, she denied she was asked about item 7 in connection with the kerosene stove and firewood stove. Nor were questions Nos. 4, 5 and 6 asked by DW2.

She admitted she signed the form at 25 High Street, Sibu, where she lived. She denied the information given on the form was given by PW2.

Kho Yee Khieng (DW1) the tenant at the time paid her a sum of $80 rent per month. DW1 reared pigs some 150 feet away from the house. She denied any knowledge of the water pump, nor was she aware that DW1 kept a 4 gallon kerosene tin in her house.

She said in re-examination that DW2 merely asked her to confirm certain facts, viz. the amount insured, property in the proposal form.

Pau Ngi Sui (PW2), a building contractor and a nephew of Lau Nai Tai (DW2) said he accompanied the plaintiff to the insurance agent. He said DW2 read out the questions in the form (Exhibit P1) to the plaintiff in Foochow.

He recollected that DW2 asked questions and the plaintiff answered them. It took approximately half an hour to fill in the particulars.

The rough plan was drawn by him and DW2 merely copied the sketch on to the proposal form.

He knew Kho Yee Khieng (DW1) the tenant of the plaintiff reared pigs in the area. He used a water pump to draw water from the river. The water pump was operated by benzine.

In re-examination he said plaintiff took away the proposal form for someone else to read it. Some time later the plaintiff asked him to send it back to DW2.

On being recalled he said he was not the agent of the plaintiff. He merely assisted the plaintiff in her correspondence.

Kho Yee Khieng (DW1) said in evidence he paid the plaintiff $80 per month as a tenant of her house. He reared about 30 pigs some 30-50 feet away from the house. Using a water pump he drew water from the river side. The pump was operated by petrol. He kept a 4-gallon army-type container and stored the benzine which he placed in one of the rooms in the house. When the fire broke out and destroyed the building there was some benzine left in the 4-gallon tin, but he could not say how much benzine there was in the tin.

Lau Nai Tai (DW2), insurance agent, said he handed the proposal form to Pau Ngi Sui (PW2) when the latter told him he wanted to insure the premises belonging to the plaintiff.

He read out the questions in the form and they were answered by PW2. PW2 also gave him particulars in respect of the first policy belonging to Tiong Leh Hung.

He cannot remember whether there were any other person with PW2. After filling the two forms he handed them to PW2. The forms were not signed yet. Subsequently he received the forms from PW2 who paid the premiums. He issued receipts to PW2.

He did not know the plaintiff's claim. She dealt directly with the insurance company. He inspected the type of house and its surroundings. His duty did not extend to inspection of the interior of an ordinary building. It was different where the insurance was in respect of a godown or warehouse, in which event he had to inspect the interior.

He cannot remember whether the plaintiff asked him why she had to sign the form. Nor could he remember replying the plaintiff that she was required to do so because this was to confirm the particulars given in the form.

He was positive the plaintiff did not sign the form in his office. He read out the declaration to PW2. PW2 said he was the agent for the plaintiff. He was talking to PW2 most of the time, who was representing both the plaintiff and Tiong Leh Hung (first policy).

The form does not give the distances between the houses. Distances are only given in Exhibit P13 — the form in respect of Tiong Leh Hung's house, because they refer to the same property.

It was PW2 who drew the plan and supplied the measurements in respect of the distances between the two houses.

It is to be observed that counsel for the plaintiff admitted that no proceedings or arbitration was conducted within 12 months from the loss or damage.

Counsel however contends that as a result of the misrepresentation alleged in paragraph 7 of the amended reply the plaintiff was induced to sign the proposal form and to enter into the contract of insurance, and the defendant cannot now rely on the exemption clause in condition 19 notwithstanding the fact that misrepresentation was not in respect of condition 19.

Condition 19 of the policy provides that in no case whatever shall the defendant be liable for any loss or damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration.

Condition 18 provides for arbitration and condition 13 stipulates, *inter alia*, that if the claim is made and rejected and an action or suit is not commenced within three months after such rejection or in the case of an arbitration taking place pursuant to condition 18 within three months after the award, all benefit under the policy shall be forfeited.

In support of his contention, counsel for plaintiff relied on *Curtis* v. *Chemical Cleaning and Dyeing Co., Ltd.*[1]

Denning L.J. (as he then was) in the course of his judgment stated at page 635:

> "In my opinion, when a condition, purporting to exempt a person from his common law liabilities, is obtained by an innocent misrepresentation, the party who has made that misrepresentation is disentitled to rely on the exemption."

Counsel also submitted that the question really turns on whether there was a breach of a fundamental term or a fundamental breach in this action.

A number of cases were cited in support of the contention that there was a breach of a fundamental term or a fundamental breach in this action, on the basis that the misrepresentation in this case went to the root of the contract thereby disentitling the defendant from relying on the exemption clause.

They are *Karsales (Harrow) Ltd.* v. *Wallis*;[2] *Smeaton Hanscomb & Co. Ltd.* v. *Sasson I. Setty Son & Co.*;[3] *John Carter (Fine Worsteds) Ltd.* v. *Hanson Haulage (Leeds) Ltd.*;[4] and *Suissee Atlantique Societe D'Armement Maritime S.A.* v. *N.V. Rotterdamache Kolen Centrale*.[5]

These cases, in my opinion, will be relevant to the consideration of this case only when the court has reached a finding that there was misrepresentation, fraudulent or innocent on the part of the defendant. But as the evidence (as to which I shall deal presently) shows, the plaintiff was in no way deceived or misled.

It is conceded before me that the plaintiff failed to commence arbitration proceedings within the period mentioned. That being so, in my judgment it is a bar to any claim on that ground alone.

Assuming I am wrong in the conclusion which I have expressed I will now turn to the other questions.

The proposal form contained a number of questions, the answers of which were filled in by DW2 at the dictation of PW2 in the presence of PW1.

It also contained a printed declaration the material words of which are: —

> "Declaration — I warrant that the above statements and particulars which I have read over and checked are true .... I agree that this Proposal *shall form the basis* of the contract between me and the Association....."

Where the proposal is made the "basis" of the contract, any mis-statement in it, whether material or not, is a ground on which the insurers may avoid liability under the policy.

Viscount Haldane in the course of his judgment in the case of *Dawsons Ltd.* v. *Bonnin & Ors.*[6] said at page 94:

> "The proposal — in other words — the answers to the questions specifically put in it is made basic to the contract. ..... Both on principle and in the light of authorities such as those which I have already cited, it appears to me that, when answers, including that in question, are declared to be the basis of the contract, this can only mean that their truth is made a condition exact fulfilment of which is rendered by stipulation foundational to its enforceability."

It is established law that in cases of insurance a party is required not only to state all matters within

his knowledge which he believes to be material to the question of the insurance, but all which in point of fact are so.

If he conceals anything that he knows to be material, it is fraud; but besides that, if he conceals anything that may influence the rate of premium which the underwriter may require, although he does not know that it would have that effect, such concealment entirely vitiates the policy.

Kennedy, L.J. in the course of his judgment in *London General Omnibus Co., Ltd.* v. *Holloway*[7] said at page 524:

"No class of case occurs, to my mind, in which our law regards mere non-disclosure as a ground for invalidating the contract, except in the case of insurance. That is an exception which the law has wisely made in deference to the plain exigencies of this particular and most important class of transaction. The person seeking to insure may fairly be presumed to know all the circumstances which materially affect the risk, and generally is, as to some of them, the only person who has the knowledge. The underwriter, whom he asks to take the risk, cannot as a rule know, and but rarely has either the time or the opportunity to learn by inquiry, circumstances which are or may be most material to the formation of his judgment as to the acceptance or rejection of the risk and as to the premium which he ought to require."

It was held in *Newsholme Brothers* v. *Road Transport and General Insurance Co., Ltd.*: [8]

"The contract of insurance requires the utmost good faith; the insurer knows nothing; the assured knows everything about the risk he wants to insure and he must disclose to the insurer every fact material to the risk."

and at page 367:

"As a matter of law, I do not understand this; the proposal is the proposal of the assured, the responsibility of declaring it true is his; how can it be the duty of the company, through their directors or agents, to the assured, to see that the assured makes correct statements of fact, when he promises them they are true, ..."

To the same effect is the case of *Joel* v. *Law Union and Crown Insurance Co.*: [9]

"The judgment of Sir George Jessel in *London Assurance* v. *Mansel* 11 Ch. D. 363 shows that the principles which govern insurance matters, which are said to require the utmost good faith, *uberrima fides*, apply to all kinds of insurances."

Even assuming that the accuracy of the plaintiff's answers was now made part of the basis of the contract, the question would still remain to be decided whether there was in this case such a mis-statement or non-disclosure of a material fact as, in the absence of fraud, would avoid the contract.

In *Joel* v. *Law Union and Crown Insurance Co.* it was held (at page 869) that:

"Contracts of insurance have been held to be contracts in relation to which *uberrima fides* is requisite on the part of the assured; and, therefore, mis-statement, or concealment or non-disclosure of any fact which it was material for the insurers to know, and which was known to the assured, has, no doubt, been held to avoid the contract, although there may have been no fraud on the part of the assured, and he may not have known that the fact so concealed was material."

The plaintiff has studied Chinese — primary school and signed her name in Chinese in the proposal form.

It is to be noted that the particulars are also translated in the Chinese language.

True, the declaration was written only in English, but on her own showing, and it is established in her evidence, she took the proposal form home and as PW2 said in re-examination which I quote:

"P.W.1 (the plaintiff) brought Ex. P1 (the proposal form) back to get someone else to read it and she asked me to send it back to Lau Nai Tai (D.W.2)."

In her evidence she stated as follows: —

"I signed the form Ex. P1 at 25, High Street where I was living."

In other words the plaintiff approved of the answers before signing.

It is to be observed that the plaintiff, Pau Ngi Sui (PW2) and Lau Nai Tai (DW2) are Chinese Foochow and there is no suggestion from counsel for the plaintiff that neither the plaintiff nor PW2, or DW2 failed to understand what was said when filling the proposal form.

If a person in the position of the plaintiff chooses to sign a form without reading the contents of the proposal from which somebody else filled in and takes the form home for someone to read it, and if the plaintiff acquiesces in that by signing it, she must be treated as having adopted it.

Both the plaintiff and Lau Nai Tai (DW2) gave evidence in this case and there is a good deal of discrepancy between the stories told by them respecting what transpired when the proposal form was filled in but having seen both the parties in the witness box, I have no hesitation in accepting the evidence of DW2 in preference to that of the plaintiff on all material matters as to which they are at issue.

In so far as it is a question of fact I find and in so far as it is a question of construction I hold that the answers in the proposal form and the policy formed the basis of the contract of the insurance. I also find that the plaintiff warranted during the currency of this policy the building insured by the policy is detached by at least 20 feet on all sides from any other building (excluding small out-houses).

Holding as I do I find there was no misrepresentation of any sort. Nor was the plaintiff induced by any misrepresentation to sign the proposal form.

I see no reason to doubt the evidence of Kho Yee Khieng (DW1) when he said he kept a 4-gallon army-type container and at the time the fire broke out there was left some benzine, which I hold and find as a fact.

If to questions 6, 7 and 8 the answers in the form are untrue and there was suppression of material facts, which I find as a fact, then the policy is void, and the plaintiff cannot recover.

It was also contended that DW2 is the agent of the defendant and has a duty to use such care to ensure that the answers recorded are true.

Generally, it seems to me, the agent of an insurance company in completing a proposal form for a proposer is acting (such as the present) as the plaintiff's agent and not on behalf of the company.

Greer L.J. in *Newsholme Bros.* v. *Road Transport and General Insurance Co., Ltd.* said at page 454:

".... I also take the view that notice to the agent whose duty was to obtain a signed proposal form and send it to the company, was not notice to the company of anything inconsistent with the signed proposal form, and that in filling up the form, whether he mistook the instructions of the insured, or whether he intentionally filled in something different from what he was told, he was not acting as the agent of the company, but as the agent of the insured."

The legal position in such cases is set out in *Halsbury's* Laws of England Vol. 22 (3rd Edition) at page 204:

"In filling in the answers in a proposal form an insurance agent, ..., is normally regarded as the agent for the proposer, at the request, express or implied, of the latter. Even if the agent knows the truth, his knowledge is not in that case imputed to the insurers. If he is careless in filling up the form, it is the proposer, not the insurers, who may maintain an action in negligence against him. Furthermore, where the proposer himself signs the proposal form, as is usually insisted upon by insurers, by signing he adopts whatever answers the agent has inserted and makes them his own. This is clearly the case where he reads and approves the answers before signing: but the position is the same if he chooses to sign the proposal without reading them, or if he signs the form when it is blank, leaving it to the agent to insert the answers later. It is irrelevant to inquire how the inaccuracy arose; or whether the agent acted honestly or dishonestly; or whether the agent had forgotten or misunderstood the correct information he had been given; or whether the answers were a mere invention on the part of the agent; if the result is that inaccurate or inadequate information is given on material matters, or that a contractual stipulation as to accuracy or adequacy of any information given is broken, it is the proposer who has to suffer."

It has been held in a very recent Court of Appeal case in *O'Connor* v. *B.D.B. Kirby Co.*[10] by Megaw L.J. that a broker who takes it on himself to fill in a proposal form for a client owes the client a duty to use such care as is reasonable in all the circumstances towards ensuring that the answers recorded to the questions in the proposal form accurately represented the answers given to the broker by the client. He does not owe a duty to ensure that every answer is correct.

In my judgment for the reasons which I have given the plaintiff's claim is dismissed with cost.

Judgment for defendant.

HARBANS KAUR & ANOR. v. LO KUM SANG

[O.C.J. (Wan Suleiman J.) March 10, 1972]

[Seremban — Civil Suit No. 180 of 1970]

Damages — Award — Road accident — Contributory negligence — Appropriate multiplier — Civil Law Ordinance, 1956, ss. 7 & 8.

The plaintiffs, the administratrix and co-administrator of the estate of one Sarja Singh, deceased, brought this action for the benefit of the estate of the deceased and his dependants, under sections 7 and 8 of the Civil Law Ordinance, 1956.

The deceased was involved in a road accident on February 25, 1969, whereby he was knocked down by a lorry driven by the defendant. The deceased was 54 years old at the time of his death and was due to retire on attaining the age of 60 years. He was employed by the British Army at a salary of $378 per month.

The court had to determine the question of negligence, and whether or not there was contributory negligence on the part of the deceased.

Held: (1) the deceased was contributorily negligent to the extent of 25%;

(2) in the circumstances of this case, any multiplier in excess of 6 would not be appropriate in computing damages;

(3) by virtue of section 8 of the Civil Law Ordinance, 1956, the sum of $2,000 should be awarded to the estate of the deceased. But this sum would merge with the award under section 7. Under section 7 the sum of $17,280 should be awarded to the dependants as general damages. Special damages was agreed at $1,100;

(4) since the deceased was contributorily negligent to the extent of 25%, both general and special damages were to be scaled down to $13,785. Interest disallowed.

Case referred to:-

(1) *Ban Pet Hock* v. *Ong Ah Ho* [1966] 2 M.L.J. 253.

CIVIL SUIT.

David Tay for the plaintiffs.

Wong Seng Chow for the defendant.

Wan Suleiman J.: The plaintiffs who are the administratrix and co-administrator of the estate of Sarja Singh s/o Pakhar Singh, deceased, brought this action for the benefit of the estate of the deceased and his dependants under sections 7 and 8 of the Civil Law Ordinance, 1956.

The statement of agreed facts (Exhibit "A") reads as follows: —

"1. A collision between motor lorry NC 5460 and the deceased occurred on the 25th day of February, 1969 at about 7.20 a.m. at or in front of the General Hospital, Seremban, in the State of Negri Sembilan.

2. At the time of the collision the weather was good, the road was dry and visibility was excellent.

3. The motor lorry NC 5460 which was being driven by the defendant was travelling in the direction of Seremban Town from the direction of Port Dickson."

Harbans Kaur, wife of the deceased, testified that just before the accident they had alighted from a bus at the bus stop in front of the hospital on the left side of the road as one faces Port Dickson, and that she, the deceased and Sarup Singh (PW2) had then proceeded to cross the road to the centre white line, where there was, it is agreed by both sides two raised cement road dividers with a gap in between directly opposite the entrance to the hospital.

Sarup Singh was to her right, and beyond him was the deceased.